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The Honorable Tom Miller
Office of the Attorney General
1305 East Walnut Street
Des Moines, IA 50319

Dear Attorney General Miller:

We write to raise concerns about certain provisions of the draft term sheet submitted to mortgage servicers earlier this month. As members of the Mortgage Foreclosure Multistate Group—including two members of the group's Executive Committee—we have been working with your office to investigate improprieties in the residential mortgage servicing sector since October, 2010. The initial result of that five-month effort was the March 3, 2011, term sheet that your office provided to five of the largest mortgage servicers. Please know that our purpose in raising—and in some case, reiterating—our objections is to forge consensus within our fifty-state group so that we can work collaboratively to redress the unlawful conduct that prompted our investigation in the first place.

As we move forward in this matter, we believe, as a general proposition, that the Executive Committee should have as its focus law enforcement, with the primary goal of holding culpable financial institutions accountable for their misconduct. As the chief legal officers within our respective states, we have all been deeply troubled by the revelations of numerous practices within the mortgage servicing industry--which are within the scope of our respective jurisdictions and which the term sheet seeks to correct. These practices include, among others, robo-signing and abuse of the legal process, lack of proper documentation to establish the right to foreclose, inaccurate and/or unfair handling of borrowers' account information, poor response to distressed homeowners, the lack of transparency in loss mitigation programs, initiating foreclosure proceedings against homeowners pursuing loan modifications in good faith, unreasonable delays in loss mitigation review, forced placed insurance, and charging duplicative and excessive and other discretionary fees.

These types of violations addressed by the term sheet very appropriately fall within the scope of our authority and we support the working group's actions to correct these problems. However, in other respects, the term sheet appears to reach well beyond the scope of our enforcement role,

and, in some instances, far exceeds the scope of the misconduct which was the subject of our original investigation--as the Attorneys General from Oklahoma, Alabama, and Nebraska asserted in a letter to you last week. For example, the term sheet proposes to impose documentation requirements that could conflict with state laws—particularly states whose legislatures have authorized non-judicial foreclosures in their jurisdictions.

Additionally, many terms go beyond enforcement into regulation that would have Attorneys General deeply involved in the review and monitoring of the servicers' everyday business practices and would go so far as mandating automatic review of modification denials whether or not requested by the homeowner, and even dictating how payments should be applied. These and other terms could have the unintended effect of unnecessarily prolonging the foreclosure process and therefore delaying the recovery of the housing market. We are particularly concerned that the term sheet appears to propose government-imposed solutions to problems in the financial markets that the investigation was never intended to address. As some of us have expressed to you and your staff in the past, we remain troubled that the term sheet proposes to impose heightened loss mitigation requirements and forced principal reductions on mortgage servicers. Although loan modifications and principal reductions may work in some cases, unfortunately, there are many mortgages where these mechanisms will be—and have been—ineffective.

With respect to loan modifications, the Special Inspector General for the Troubled Asset Relief Program (“TARP”)—who oversees the U.S. Treasury’s Home Affordable Modification Program (“HAMP”)—recently told a congressional committee that more than 792,000 loan modifications have been cancelled. Equally troubling, the Inspector General also explained that failed loan modifications can actually leave homeowners worse off than they would have been without the modification. According to the Inspector General’s congressional testimony, failed modifications can “leave borrowers with more principal outstanding on their loans, less home equity, depleted savings, and worse credit scores.”

Like the unintended financial harm that unsuccessful loan modification programs may inflict upon homeowners who simply cannot afford to keep their homes, the term sheet’s principal reduction proposals may also have unintended consequences. These proposals do a disservice to homeowners who, despite an economic downturn, have worked hard to maintain their mortgages. Because of the term sheet’s vague principal reduction standards, some homeowners may simply default on their loan and use the States’ agreement to obtain a principal reduction—whether or not they actually made an effort to maintain their mortgage. As a result, the term sheet’s principal reduction proposals may actually foster an unintended “moral hazard” that rewards those who simply choose not to pay their mortgage—because they can simply take advantage of lenders’ obligation to honor virtually automatic principal write-downs.

In addition to our concerns about the scope, regulatory nature, and unintended consequences of some of the term sheet’s proposals, we are also apprehensive about the relevance of some

proposals to resolve our investigation. All fifty states undertook this joint enforcement effort to address the failure of servicers to comply with the laws governing foreclosures. With that investigative purpose in mind, going forward, we believe that the States' settlement proposal should focus on the alleged misconduct that prompted our investigation.

Presently, the term sheet's principal reduction and loan modification proposals do not actually remedy the types of violations our investigation was intended to address. To the extent loan modification proposals should be included at all, they should be limited in scope and only address unlawful conduct at issue in this investigation—such as banks' improper handling of loan modification applications. As you know, this particular investigation was intended to address allegations of misconduct in the loan servicing industry, not improprieties in loan origination.

There are other avenues to address these concerns, and, as you know, there have been successful multistate resolutions in the loan origination industry in the past. In 2004, an investigation by 48 states revealed that Ameriquest Mortgage Company relied upon unlawful and misleading high-pressure sales tactics to originate subprime mortgages, the States successfully obtained injunctive relief and refunds for homeowners. More recently, six states worked with Iowa to negotiate an \$8 billion agreement that resolved the States' investigation into Countrywide Financial Corporation.

As you know, that investigation focused on unlawful loan origination—such as Countrywide's failure to accurately disclose the terms of adjustable rate mortgage loans and its practice of offering no-documentation loans to subprime borrowers. Because the Countrywide investigation focused on improprieties at the loan origination phase, the resulting settlement redressed that improper conduct.

Additionally, last October, eight states reached a settlement resolving allegations that Wachovia Corporation and Golden West Corporation engaged in the deceptive marketing of payment option adjustable rate mortgage loans. In light of our concerns that the scope of some of the proposed remedies set forth in the term sheet exceeds the sphere of the States' investigation, we strongly urge that the multistate group re-visit the current proposal and revise the term sheet so that its focus is on the remedies necessary to redress the misconduct prompting our investigation.

Having set forth our concerns, we acknowledge and appreciate that the term sheet was always intended as a starting point for negotiations—not a list of demands. While this approach normally may be an effective negotiation tactic, recent events with respect to this matter suggest it may not be effective in this case. Indeed, as the chief legal counsel for our respective States, we do not believe that government lawyers should reach beyond the confines of the existing law—an extended reach that is contemplated by the term sheet. Each of us has an obligation not only to enforce the law—which in this case means holding banks accountable for their unlawful conduct—but also to defend the rule of law. We are concerned that the term sheet's proposals exceed the scope of our mission.

Setting aside our personal beliefs about the roles of attorneys general in this case, we also believe that the expansive approach proposed in the term sheet has allowed the subjects of our investigation—some of the nation’s largest mortgage servicers—to distract the public discourse from the very purpose of our investigation. Unfortunately, we fear that those who may prefer to avoid responsibility for their improper conduct have been aided by the States’ own negotiation strategy and its proposal for a broad, new regulatory regime. In our view, the fifty-state working group has a unique opportunity to address the mortgage servicers’ legal and financial malfeasance on a national scale—but we are concerned that expanding beyond the scope of our already expansive charge may ultimately undermine the effectiveness of our law enforcement efforts.

Despite our concerns, each of us is grateful for the significant time and effort you and your staff have devoted to this endeavor and we thank you for your leadership on this very important issue. Because of your efforts and the Executive Committee’s considerable work on this case, the States are poised to address unacceptable and unlawful practices that were widespread within the nation’s largest mortgage servicers. As we have acknowledged throughout this letter, many of the term sheet’s proposals would be tremendously beneficial to homeowners in our states. With that in mind, we urge the Executive Committee to review the proposed term sheet in the context of our enforcement role, focus on redressing legal violations that fall within the scope of our investigation, and work collaboratively with all fifty states to remedy the unlawful mortgage servicing practices that prompted our investigation. We look forward to continuing the discussion regarding these very complex issues and continuing to work with you to achieve the best possible result for our citizens and our economy.

Sincerely,



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